

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
RESOLVING AUGUST 28, 2002 MOTION TO QUASH SUBPOENAS**

By motion filed August 28, 2002, AT&T Wireless Services, Inc. (AWS) and Los Angeles Cellular Telephone Company (LA Cellular) jointly move to quash two subpoenas served by the Commission's Consumer Protection and Safety Division (CPSD) on counsel for plaintiffs and counsel for defendants in the pending superior court class action, *Spielholz v. Los Angeles Cellular Telephone Company (Spielholz)*. AWS and LA Cellular are defendants in the *Spielholz* case. Cingular Wireless (Cingular), the respondent in this Commission investigation, is not a party. The subpoenas seek production of all discovery exchanged between the *Spielholz* parties, all declarations or deposition transcripts in that case, and all sealed pleadings.

On September 12, CPSD filed a response in opposition. After reviewing the motion and response, I held an informal telephone conference call on

September 16, where I ascertained that the parties had not met or conferred prior to filing their pleadings. I directed them to do so promptly and thereafter to submit, by letter on September 20, a joint status report. I also granted AWS and LA Cellular leave to file a reply to CPSD's response, should they determine it necessary to do so. A reply was filed on September 23.

The September 20 joint status report states that the parties have succeeded in resolving most of the issues between them. Specifically, AWS and LA Cellular will produce to CPSD, or authorize *Spielholz* plaintiffs' counsel to produce, those documents responsive to CPSD's narrowed request, as described in the letter. The responsive documents comprise a subset of the 750 boxes of documents initially at issue.

Two issues remain outstanding. These disputes, identified consistent with the terminology used in the joint status report, shall be resolved as follows:

Expert Reports and Depositions. The joint status report indicates that CPSD seeks all expert reports exchanged between the *Spielholz* parties and all transcripts of depositions of those experts that concern (1) coverage and related technical issues and (2) consumer expectations. AWS and LA Cellular propose to produce these documents but to redact any confidential information in them specific to AWS and LA Cellular (i.e., commercially sensitive or proprietary information). This proposal is acceptable, given the context of this proceeding. It appropriately narrows discovery to that "reasonably calculated to produce admissible evidence or the discovery of admissible evidence." (See *Davies v. Sup. Ct.* (1984) 36 C.3d 291.) The exclusive focus of the Commission's investigation is Cingular and its operational practices, not AWS or LA Cellular (or other cellular carriers). The Commission will not undertake fact finding about AWS or LA Cellular in this proceeding.

However, AWS and LA Cellular are cautioned to exercise reasonable care and good judgment so as to avoid over-zealous use of redactions that unnecessarily render the subject documents unintelligible. Parties shall meet and confer in good faith, as Commission Resolution ALJ-164 requires, before bringing any subsequent, related discovery disputes to the Commission for resolution. Furthermore, any subsequent motion or opposition that refers to a redacted document or documents shall attach the unredacted text under seal.

On-going Discovery Obligations. CPSD seeks open-ended leave to require AWS and LA Cellular to accept additional discovery requests under these subpoenas. AWS and LA Cingular ask that CPSD produce any further discovery requests within two weeks. CPSD has not established why it requires open-ended discovery of non-parties. Thirty days from the date of this ruling should provide CPSD with adequate time to review any *Spielholz* document logs and advise AWS and LA Cellular of its desire for production of any other, relevant document categories.

IT IS RULED that:

1. The August 28, 2002 Motion to Quash Subpoenas filed jointly by AT&T Wireless Services, Inc. (AWS) and Los Angeles Cellular Telephone Company (LA Cellular) is granted in part and denied in part, as provided in these ruling paragraphs.
2. As proposed in the September 20, 2002, joint status report, AWS and LA Cellular shall promptly produce to Consumer Protection and Safety Division (CPSD) all expert reports exchanged between the *Spielholz* parties and all transcripts of depositions of those experts that concern (1) coverage and related technical issues and (2) consumer expectations. However, AWS and LA Cellular

may redact any confidential information in these documents specific to AWS and LA Cellular (i.e. commercially sensitive or proprietary information).

3. Within 30 days of the date of this ruling, Consumer Protection and Safety Division (CPSD) shall advise AWS and LA Cellular of its desire for production of any other, relevant document categories under the subpoenas that are the issue of this ruling.

Dated September 25, 2002, at San Francisco, California.

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Resolving August 28, 2002 Motion to Quash Subpoenas on all parties of record in this proceeding or their attorneys of record.

Dated September 25, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.